

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and)		
NCR CORPORATION,)		
))		
Plaintiffs,))		
v.))	No. 08-CV-16-WCG	
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GEORGE A. WHITING PAPER COMPANY,))		
ET AL.,))		
Defendants.))		
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NCR CORPORATION,))		
))		
Plaintiff,))		
v.))	No. 08-CV-0895-WCG	
))		
KIMBERLY-CLARK CORPORATION,))		
ET AL.,))		
Defendants.))		

**PLAINTIFF NCR CORPORATION'S CIVIL L.R. 7(h) EXPEDITED NON-
DISPOSITIVE MOTION TO COMPEL DIRECTED TO GEORGIA-PACIFIC
CONSUMER PRODUCTS LP (F/K/A FORT JAMES OPERATING COMPANY), FORT
JAMES CORPORATION AND GEORGIA-PACIFIC LLC**

Plaintiff, NCR Corporation (“NCR”), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 37(a)(3)(A) and (B), and Civil Local Rules 7(h) and 37, hereby moves the Court for an order to compel Defendants Georgia-Pacific Consumer Products LP (f/k/a Fort James Operating Company), Fort James Corporation, and Georgia-Pacific LLC (collectively, “GP”) to produce certain insurance settlement agreements. In support thereof, NCR states as follows:

1. In its March 1, 2011 Decision and Order, this Court held that GP may not recover from Plaintiffs amounts it has already recovered through insurance payments. *See* Decision and Order, Mar. 1, 2011 (Dkt. 1080, at 24-25). This Court also noted that “[f]urther discovery on relevant insurance proceeds may be permitted if necessary.” *Id.* at 25. Such discovery is necessary because GP alone is in possession of information relating to its prior insurance payments.

2. In accordance with the Court’s March 1 Decision and Order, on March 17, 2011 counsel for NCR discussed with counsel for GP its desire to obtain and review copies of any agreements pursuant to which GP received a payment from an insurer due to a loss or expense GP incurred relating to the Lower Fox River environmental cleanup (“Insurance Settlement Agreements”). The Insurance Settlement Agreements must be reviewed in order to determine the amounts GP has already recovered through insurance payments. *See* Declaration of Evan B. Westerfield in Support of NCR’s April 15, 2011 Civil L.R. 7(h) Expedited Non-Dispositive Motions, ¶ 2 (hereinafter “EBW 4/15/11 Decl.”).

3. GP’s counsel represented to NCR on March 25, 2011, and represented to the Court on March 30, 2011, that it could not voluntarily disclose all of its Insurance Settlement Agreements. According to GP’s counsel, the Insurance Settlement Agreements contain

confidentiality provisions, based on which one or more of GP's insurers objected to the disclosure of the Insurance Settlement Agreements. As a result, GP's counsel represented that disclosure would be possible only in response to an order of this Court compelling same and the entry of an appropriate protective order. EBW 4/15/11 Decl., ¶¶ 3-4. Counsel for NCR and GP have conferred, and a Motion for Entry of a [Proposed] Stipulated Protective Order is being filed contemporaneously herewith.

4. Courts have held that settlement agreements must be produced if they would provide discoverable information such as whether offsets should be applied to damage awards to prevent double-recovery. *See White v. Kenneth Warren & Son, Ltd.*, 203 F.R.D. 364, 367 (N.D. Ill. 2001); *Bennett v. La Pere*, 112 F.R.D. 136, 140 (D.R.I. 1986).

5. Additionally, disclosure of settlement agreements is not barred by Federal Rule of Evidence 408 because NCR does not seek to use such information to prove liability for, invalidity of, or amount of the settled claim. *See Matsuura v. E.I. du Pont De Nemours and Co.*, 2006 WL 2734291, at *2 (D. Hawaii Sept. 22, 2006) (noting that Rule 408 "specifically allows [] use of the settlement evidence [where] it is being offered for another purpose.") (citation and internal quotation marks omitted).

6. For the above-stated reasons, NCR respectfully requests that the Court issue an order compelling GP to promptly provide copies of all Insurance Settlement Agreements, as defined above, that GP is unable to produce voluntarily. This production would be pursuant to the terms of the Stipulated Protective Order, filed contemporaneously herewith.

Respectfully submitted,

NCR CORPORATION

/s/ Kathleen L. Roach

Dated: April 15, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2011, I electronically filed the foregoing using the ECF system, which will send notification of such filing to: Philip Munroe at DiRenzo & Bomier LLC, pmunroe@direnzollc.com; Scott Fleming at Weiss Berzowski Brady LLP, sbf@wbb-law.com; David Mandelbaum at Greenberg Traurig, LLP, mandelbaumd@gtlaw.com; Marc Davies at Greenberg Traurig, LLP, daviesm@gtlaw.com; Sabrina Mizrachi at Greenberg Traurig, LLP, mizrachis@gtlaw.com; Monique Mooney at Greenberg Traurig, LLP, mooneym@gtlaw.com; Caleb Holmes at Greenberg Traurig, LLP, holmesc@gtlaw.com; Patrick Zaepfel at Kegel Kelin Almy & Grimm, LLP, zaepfel@kkaglaw.com; Philip Hunsucker at Hunsucker Goodstein & Nelson PC, phunsucker@hgnlaw.com; David Rabbino at Hunsucker Goodstein & Nelson PC, drabbino@hgnlaw.com; Christopher Dow at Hunsucker Goodstein & Nelson PC, cdow@hgnlaw.com; Allison McAdam at Hunsucker Goodstein & Nelson PC, amcadam@hgnlaw.com; Eric Mroz at Hunsucker Goodstein & Nelson, P.C., mroz@hgnlaw.com; David Edquist at von Briesen & Roper, s.c., dedquist@vonbriesen.com; Christopher Riordan at von Briesen & Roper, s.c., criordan@vonbriesen.com; Patrick Wells at von Briesen & Roper, s.c., pwells@vonbriesen.com; Russell Wilson at Ruder Ware, rwilson@ruderware.com; Linda Benfield at Foley & Lardner LLP, lbenfield@foley.com; Sarah Slack at Foley & Lardner LLP, sslack@foley.com; Charles Gering at Foley & Lardner LLP, cgering@foley.com; Paul Bargren at Foley & Lardner LLP, pbargren@foley.com; Michelle Gale at Dykema Gossett PLLC, mgale@dykema.com; Joseph Basta at Dykema Gossett PLLC, jbasta@dykema.com; Daniel Murray at Johnson & Bell, Ltd., murrayd@jbltd.com; Garrett Boehm, Jr. at Johnson & Bell, Ltd., boehmg@jbltd.com; Frederick Mueller at Johnson & Bell, Ltd., muellerf@jbltd.com; John Cermak, Jr. at Baker & Hostetler LLP, jcermak@bakerlaw.com; Sonja Inglis at Baker & Hostetler LLP, singlin@bakerlaw.com; Timothy Anderson at Remley & Sensenbrenner, S.C.,

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I also hereby certify that on April 15, 2011, I caused a copy of the foregoing to be sent via electronic mail to the following counsel:

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